

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:05-CV-48 FL (1)**

FEB 22 2005

RICHARD P. NORDAN, as Ancillary)
Administrator for the separate Estates of)
STEPHEN S. HELVENSTON, MIKE R.)
TEAGUE, JERKO GERALD ZOVKO and)
WESLEY J.K. BATALONA,)

Plaintiffs,)

v.)

BLACKWATER SECURITY)
CONSULTING, LLC, a Delaware Limited)
Liability Company; BLACKWATER)
LODGE AND TRAINING CENTER, INC.,)
a Delaware Corporation, JUSTIN L.)
MCQUOWN, an individual; and THOMAS)
POWELL, an individual,)

Defendants.)

**PLAINTIFF'S EVIDENTIARY
OBJECTIONS TO EVIDENCE
SUBMITTED BY BLACKWATER
DEFENDANTS IN SUPPORT OF
THEIR MOTION TO DISMISS**

COMES NOW the Plaintiff in the above-entitled action, and hereby submits the following evidentiary objections to Exhibits "A" and "B," attached to the Blackwater Defendants' Memorandum of Law in support of their Motion to Dismiss.

1. Compensation Order (Exhibit "A"): Plaintiff hereby objects to the Compensation Order attached as Exhibit "A," in that it lacks foundation and the authenticity required by Federal Rules of Evidence 901 and 902. In addition, and it does not meet the requirements for taking judicial notice, pursuant to Federal Rules of Evidence 201(b).

First, there is no evidence presently before this court laying the foundation or establishing the authenticity of this document. "The requirement of authenticity or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Federal Rules of Evidence 901.

In the instant case, the record before the court is devoid of any evidence establishing the authenticity of Exhibit "A." Instead, it is merely attached to the Defendants' Memorandum of Law as an exhibit, without any affidavit or declaration as to its origin, source or authenticity.

Moreover, Exhibit "A" does not qualify as a self-authenticating document under Federal Rules of Evidence 902. First, it does not fall under Rule 902(1), in that Exhibit "A" does not contain any official seal from the purported United States department. Second, it does not fall under Rule 902(2), in that there is no certification from a public officer under seal, which might authenticate the document. Thus, it is respectfully requested that the court exclude Exhibit "A" from evidence for lack of foundation and authenticity.

Second, due to the lack of evidence laying a foundation and establishing the authenticity of Exhibit "A," it does not meet the threshold requirements for taking judicial notice. Federal Rules of Evidence 201(b) provides that a judicially noticed fact "must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

Here, due to the lack of foundation and authenticity of the document, in that there is no evidence of the origin or source of the document, it bears no official seal, and is not a certified copy, Exhibit "A" is not capable of accurate and ready determination as to the facts contained

therein. Hence, it is respectfully requested that the court deny the Defendants' request for judicial notice of Exhibit "A."

2. Four Independent Contractor Service Agreements (Exhibit "B"): Plaintiff hereby objects to the admission into evidence of the four Independent Contractor Service Agreements attached collectively as Exhibit "B," in that they lack foundation and the authenticity required by Federal Rules of Evidence 901.

There is no evidence presently before this court establishing the authenticity or validity of these documents. "The requirement of authenticity or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Federal Rules of Evidence 901.

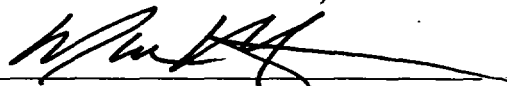
In the instant case, the record before the court is devoid of any evidence establishing the authenticity of the Agreements attached as Exhibit "B." In addition, there is nothing laying the foundation for these documents to be introduced as evidence in this case. Instead, they are merely attached to the Defendants' Memorandum of Law as an exhibit, without any affidavit or declaration as to their origin, source or authenticity.

In sum, both Exhibits "A" and "B" fail to meet the evidentiary requirements admissibility, and thus it is respectfully requested that the court sustain the objections herein and exclude them from the court's consideration of the motion to dismiss.

This 21st day of February 2005.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **Plaintiff's Evidentiary Objections to Evidence Submitted by Blackwater Defendants in Support of Their Motion to Dismiss** in the above-entitled action on all of parties to this cause by depositing a copy, postage prepaid, in the United States Mail, addressed as follows:

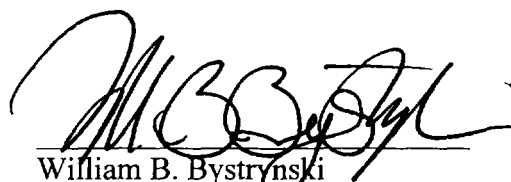
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This is 2nd day of February, 2005.


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